

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:PEN:PHI:GL-501938-00

KKRaup

date:

JUN 27 2000

to: Chief, Special Procedures Branch, Pennsylvania District
Research & Resolution (Attn: Mike Stumpo)

from: Assistant District Counsel, Pennsylvania District, Philadelphia

subject: **Section 6015(e) - Meaning of "levy or proceeding in court"**

Taxpayer: [REDACTED]

We are writing in response to your request for advice dated March 17, 2000, on whether the Service must release a Notice of Federal Tax Lien without payment where the taxpayer is voluntarily selling the property and the taxpayer has filed a claim for innocent spouse relief under Section 6015(b) or (c). We believe that the Service's mere refusal to satisfy a tax lien without payment from a voluntary sale of real property is not a violation of Section 6015(e), which prohibits a levy or a proceeding in court while the taxpayer has an innocent spouse claim pending.¹ We are unaware of any policy of the Service that would prohibit the Service from accepting payment.

We have set forth below the facts and our analysis.

ISSUE

Whether the Service must release a Notice of Federal Tax Lien without payment where the taxpayer is voluntarily selling the property and the taxpayer has filed a claim for innocent spouse relief under Section 6015(b) or (c)?

CONCLUSION

The Service is not required to release a Notice of Federal Tax Lien without payment where the taxpayer is voluntarily selling the property and the taxpayer has filed a claim for innocent spouse relief under Section 6015(b) or (c).

¹We do not address the situation where the IRS demands payment from the title company, such as where there is a dispute regarding payment.

FACTS

In [REDACTED], the Service filed a Notice of Federal Tax Lien against taxpayer and her husband for tax years [REDACTED], [REDACTED], and [REDACTED]. The NFTL attached to taxpayer's real property. Taxpayer's husband died.

On [REDACTED], taxpayer filed a request for innocent spouse relief. The claim was disallowed and the taxpayer requested a reconsideration from Appeals. Thereafter, on [REDACTED], the taxpayer voluntarily sold the real property to which the NFTL had attached. The proceeds of the sale to which the NFTL attached were escrowed by the title company to satisfy the NFTL. There was sufficient equity in the property to pay the Service in full. Taxpayer was unhappy with the escrow arrangement and requested that the Service release the NFTL asserting, inter alia, that the escrow of the money and/or payment of the money to the Service would violate Section 6015(e). The Collection Division disagreed with the taxpayer and denied her request. Taxpayer requested a reconsideration from Appeals. Appeals disagreed with Collection and directed Collection to discharge the NFTL on the property. Collection discharged the NFTL and is now requesting our advice.

DISCUSSION

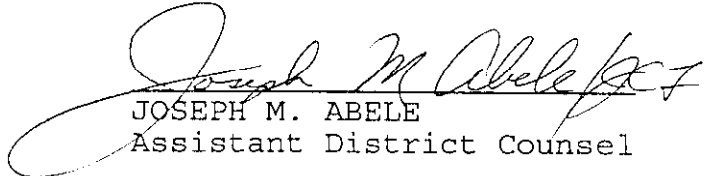
Section 6015(e)(1)(B)(i) provides that "no levy or proceeding in court shall be made, begun, or prosecuted against the individual making an election under subsection (b) or (c) for collection of any assessment to which such election relates...." There are currently no treasury regulations which discuss the meaning of these words. The House Committee Report provides that "Except for termination and jeopardy assessments, the Secretary may not levy or proceed to court to collect any tax from a taxpayer claiming innocent spouse status with regard to such tax until the expiration of the 90-day period in which such taxpayer may petition the Tax Court or, if the Tax Court considers such petition, before the decision of the Tax Court becomes final." H.R. Rep. No. 105-364, pt. 1. The Senate Committee Report and the Conference Committee Report do not address this issue at all. See S. Rep. No. 105-174; H.R. Conf. Rep. No. 105-599.

To interpret the meaning of a statute, courts must first examine the actual language of the statute. United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 241 (1989). "The rules of statutory construction mandate that a statute is to be read as a whole since the meaning of statutory language, plain or not, depends on context." Tate & Lyle, Inc. and Subsidiaries v. Commissioner, 87 F.3d 99 (3rd Cir. 1996). When the terms of the

statute are clear, the language of the statute is controlling absent rare and exceptional circumstances where the literal application of a statute will produce a result demonstrably at odds with the intention of its drafters. Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571 (1982).

In this case, the words of the statute are clear. The statute prohibits the Service from levying or proceeding in court to collect an assessment relating to an innocent spouse election. The Service's mere refusal to satisfy a tax lien without payment from a voluntary sale of real property is clearly not a levy or a proceeding in court. Accordingly, we believe that it is not prohibited by Section 6015(e).

Through this memorandum, we will advise the Appeals Office of our views on this issue. We request that any further discussions between the Collection and Appeals divisions concerning this matter be coordinated through the Office of District Counsel. If you have any questions kindly contact attorney Kate Raup at (215)597-3442. We are closing our file.


JOSEPH M. ABELE
Assistant District Counsel

cc: Assistant Regional Counsel, GL (Olaksen)
Chief, Pennsylvania Appeals Office